

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

OKEMO MOUNTAIN, INC.,	:	
Plaintiff	:	
	:	
v.	:	Docket No. 1:93-cv-22
	:	
PATRICK SIKORSKI and	:	
OVERSEAS SERVICES, INC.,	:	
d/b/a EXPEDITIONS,	:	
Defendants	:	
	:	
	:	
	:	

RULING ON CROSS MOTIONS FOR SUMMARY JUDGMENT
(Papers 110 & 114)

On March 8, 2003, Okemo Mountain, Inc. ("Okemo") filed an action to renew a judgment it obtained on May 10, 1995 against Patrick Sikorski ("Sikorski") pursuant to VT. STAT. ANN. tit. 12, § 506 (2003). The judgment was for slightly more than \$450,000, of which Sikorski has paid approximately \$4,000.

Sikorski responded by filing a Motion for Summary Judgment and to Vacate or Amend the Judgment (Paper 110). In short, Sikorski argues that a release signed by Okemo in settlement of related litigation absolves him from all liability. Sikorski learned of the release in May 2003. In response, Okemo filed a Motion for Summary Judgment (Paper 114). For the reasons discussed below, Okemo's Motion for Summary Judgment is GRANTED.

DISCUSSION

A motion for summary judgment is properly granted when there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c); Lipton v. Nature Co., 71 F.3d 464, 469 (2d Cir. 1995). The burden is on the moving party to demonstrate there are no material facts genuinely in dispute. See Weinstock v. Columbia Univ., 224 F.3d 41 (2d Cir. 2000). In deciding a motion for summary judgment, the court must view the facts and all the inferences to be drawn therefrom in the light most favorable to the party opposing the motion. Howley v. Town of Stratford, 217 F.3d 141, 150-51 (2d Cir. 2000).

The facts relevant to the present motion are undisputed; instead, the parties contest the effect of the release. The release was signed by Okemo when it settled related litigation with the United States Sporting Clays Association ("USSCA"). The language of the release is broad, releasing any and all of USSCA's agents and employees from any and all liability. Sikorski claims he was an agent or employee of USSCA and that this general release precludes the judgment against him. On this basis he seeks to vacate or amend the judgment.

Okemo argues that its case against Sikorski proceeded not against him as an agent or employee of USSCA but rather as an individual acting in his own capacity. Okemo concedes that

initially its case was based on Sikorski's actions as an individual *and* as an agent of USSCA; however, after the settlement with USSCA, the action proceeded to trial on Sikorski's behavior as an independent actor, and it was on that basis the Court entered judgment against him. The language of the Court's Opinion and Order of May 10, 1995 supports this argument.

The Opinion and Order is clear that the tortious actions upon which the judgment was based were committed by Sikorski in his individual capacity. Judge Billings' Opinion and Order notes that after the settlement between Okemo and USSCA, Okemo abandoned a number of claims against Sikorski, and his liability is limited to three counts of Okemo's complaint. See Opinion and Order, p. 1-2. The Opinion contains references to Sikorski acting both as an agent and as an individual:

... Okemo and USSCA held a "Site Selection and Event Feasability" meeting at Okemo. ... Davis, Sikorski, and three other individuals attended on behalf of USSCA. See Pl.'s Ex. 5. At this point in time, however, Sikorski was also acting on his own behalf, as an individual.

Opinion and Order, p. 3 (emphasis added). While recognizing Sikorski's dual roles, Judge Billings found him liable to Okemo based on a theory of individual responsibility.

In response, Sikorski argues the language of the release is broad enough to preclude all suits against all USSCA

agents, and since he was an agent, the suit is barred, even if the tortious conduct falls outside the scope of any agency relationship. One can act as both an agent and as an individual, however, and the release protects Sikorski only from suits based on actions taken within the scope of his agency. See Horizon Fin., F.A. v. Hansen, et al, 791 F. Supp. 1561, 1573 (N.D. Ga. 1992). In Horizon, a general release protected the defendants from all liability for actions within the scope of their agency relationship, but not for actions performed for their own behalf. Id. Despite the general release, the defendants "remain[ed] liable for actions taken for their own account or benefit." Id. Regardless of the release, Sikorski remains liable for actions carried out for his own benefit unrelated to his agency relationship with USSCA.

Moreover, Okemo's intent in granting the release, as evidenced by surrounding facts and circumstances, was to limit the release to agents acting within the scope of their agency. See Economou v. Economou, 136 Vt. 611, 619 (1979) (determining the intention of parties to a release can be accomplished by looking at the surrounding facts and circumstances). Okemo abandoned a number of claims against Sikorski after signing the release and pursued only those allegations which the Court considered to be against Sikorski in his individual capacity.

This strongly suggests Okemo did not intend to release claims against USSCA agents for actions outside of their agency relationship. The document makes no mention of Sikorski, nor does it release claims against agents acting outside of their agency role. For these reasons, the release does not preclude renewal of judgment in favor of Okemo and against Sikorski.

CONCLUSION

Plaintiff's Motion for Summary Judgment is GRANTED. Accordingly, the Judgment in favor of Plaintiff and against Defendant shall be renewed and extended, giving it full force and effect for an additional eight-year period from the date of this Order. Defendant's Motion for Summary Judgment and to Vacate or Amend Judgment is DENIED.

SO ORDERED.

Dated at Brattleboro, Vermont this ____ day of October, 2003.

J. Garvan Murtha, U.S. District Judge